82-955

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ISABEL WOOD and JONATHAN L. HAAS,
Petitioners,
v.
CHARLES H. LEIST, JR, LAURA N. LEIST,
ROBERT E. JONES, JR., MARLYN JONES,
HUGH W. HULL and LYNNE HULL,
Respondents.

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Isabel Wood and
Jonathan L. Haas
In Propria Persona
P.O.Box 7461
Phoenix, Arizona 85011
602-277-6001

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Phoenix, Arizona 85011
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QUESTION PRESENTED

Whether the United States Court of Appeals for the Ninth Circuit denied the Petitioners their civil rights when it

1. Affirmed that the District Court correctly concluded as a matter of law that petitioners could not prevail on their claims of violation of 42 U.S.C. § 1985(2) & (3) because the necessary class-based, invidiously discriminatory animus was lacking;

2. Affirmed that the District Court correctly concluded as a matter of law that there were no violations of 42 U.S.C. § 1983;

LIST OF PARTIES

Pursuant to Rule 21.1(b), Rules of the Supreme Court, Petitioner certifies that the following is a complete list of all parties to the proceedings below:

Isabel Wood, a single woman, Petitioner-Plaintiff

Jonathan L. Haas, a single man, Petitioner-Plaintiff

Charles H. Leist, Jr. and Laura N. Leist, husband and wife, Respondents-Defendants

Ronald E. Roth and Linda Roth, husband and wife, Defendants

Robert E. Jones, Jr. and Marlyn Jones, husband and wife, Respondents-Defendants

Hugh W. Hull and Lynne Hull, husband and wife, Respondents-Defendants

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C. Wright, Law of Federal Courts 19a
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7 J. Moore & J. Lucas, Moore's Federal Practice, ¶61.11 (2d ed. 1982) 18a

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HUGH W. HULL and LYNNE HULL,
Respondents.

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Petitioners, Isabel Wood and Jonathan L. Haas, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this matter on September 9, 1982.

OPINION BELOW

The Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit and the judgments of the United States District Court for the District of Arizona are repro-

duced in the Appendix.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its Opinion on September 9, 1982. (App. 1a - 19a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS AT ISSUE

Amendment I to the Constitution of the United States of America:

> Congress shall make no laws respecting establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V to the Constitution of the United States of America:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV to the Constitution of the United States of America:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioners, Isabel Wood and Jonathan L. Haas, have been denied their civil rights by Respondents Charles and Laura Leist, Robert and Marlyn Jones and Hugh and Lynne Hull by Petitioner Haas being arrested in the court room just prior to bearing witness against Respondent Charles Leist.

Background

On or about May 15, 1978, Respondant Leist[1] filed a civil action in the Superior Court of the County of Maricopa, State of Arizona, in which Petitioner Wood was named a Third Party Defendant and Respondent Roth was

1. The spouses of the respondents are named solely to obtain jurisdiction over community property assets.

named a Third Party Defendant. Respondent Jones was Leist's attorney in this underlying action and Hull was Roth's attorney.

On or about March 17, 1978, Leist, a City of Phoenix police officer, searched the official police records for any prior convictions or outstanding warrants on the parties to this civil action, as well as on any witnesses to be called in this underlying action. Leist discovered an outstanding warrant for Haas for a traffic violation.

Haas was requested by Wood to testify in this underlying civil action in her behalf. Haas was present on three different dates in the court room while this underlying civil action was in progress[2] and was to testify on January 18, 1980.

Prior to Haas arriving in the court room police officer Leist informed Roth, Jones, Hull and others that he planned to have Haas arrested when he arrived in the court room. Roth, Jones and Hull concurred in this course of

2. The other two occasions were earlier dates, all about a month apart.

action.

Soon after Haas arrived in the court room to testify against Leist, Leist and two other Phoenix police officers entered the court room, knocked Haas to the floor, handcuffed him and dragged him from the court room.

None of the police officers had a copy of the warrant, nor had any of them ever seen a copy of the warrant.

Haas was hidden out in the Phoenix police station until after 5:00p.m., and then incarcerated in the county jail. While in the custody of the police HAAS was assaulted, abused, battered, humiliated and intimidated.

Upon the arrest and abduction of Haas, Wood left the court room and the case was continued. Upon the next trial date Wood again requested Haas to testify in her behalf, but Haas refused for fear of further injury to his person and his family. Judgment was entered against Wood and in favor of Leist in the underlying civil action.

Proceedings in the Trial Court

The complaint was filed on January 16, 1981, in the United States District Court for the District of Arizona, alleging violation of civil rights and obstruction of justice.

Hull moved the court to dismiss the complaint or for a more definite statement on January 28, 1981; the court granted the motion to dismiss the complaint as to Hull on February 25, 1981 for failure to state a claim upon which relief can be granted. Wood and Haas moved the court for finding of fact and conclusions of law and to amend the judgment as to Hull, allowing Wood and Haas to amend the complaint to state a claim upon which relief can be granted. The court denied these motions.

Jones moved the court to dismiss the complaint on February 9, 1981. The court granted the motion to dismiss as to Jones on counts 1 and 3 with leave to Wood and Haas to amend count 1. Wood and Haas filed a first amended complaint as to all Respondents on all counts on April 16, 1981. Jones moved to dismiss the

first amended complaint; the court granted the motion on June 22, 1981.

Leist answered the complaint and moved for summary judgment on April 20, 1981, filing therewith a statement of facts. Wood and Haas filed an opposition to statement of facts and a cross motion for summary judgment as to Leist. The court granted summary judgment in favor of Leist on June 15, 1981.

Roth[3] filed an answer to the complaint on February 5, 1981.

Haas moved for an order of discharge of opposing counsel, John Bouma, and his law firm of Snell & Wilmer as counsel for Jones on February 17, 1981. The court denied the motion on March 16, 1981.

Formal judgments were entered by the District Court as follows: Leist on June 19, 1981; Jones on June 29, 1981; and Hull on July 8, 1981.

Notice of appeal was timely filed on

3. This cause as to Roth is still before the District Court.

July 9, 1981, from the three judgments of the District Court to the Court of Appeals for the Ninth Circuit.

Proceedings in the Appellate Court

Petitioners raised the following questions on appeal:

1. The original complaint and the first amended complaint stated a claim upon which relief can be granted.

2. There are genuine issues of material facts to be litigated which preclude granting defendants Leist motion for summary judgment.

3. The conduct of Defendants Leist, Hull, Jones and Roth constituted a violation of the civil rights of Plaintiffs Haas and Wood under the Civil Rights Act, Title 42, of the United States Code, Section 1983.

4. The conduct of Defendants Leist, Hull, Jones and Roth constituted a conspiracy to violate the civil rights of Plaintiffs Wood and Haas under the Civil Rights Act, Title 42 of the United States Code, Section 1985.

5. The conduct of Defendants Hull, Jones and Roth violated the civil rights of Plaintiffs Wood and Haas under the Civil Rights Act, Title 42 of the United States Code, Section 1986.

6. The conduct of Defendants Leist, Hull, Jones and Roth violated the rights of the Plaintiffs to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and Section 3 of Article 4 of the Constitution of the State of Arizona.

7. The conduct of Defendants Leist, Hull, Jones and Roth constituted a conspiracy to and an obstruction of the administration of justice.

8. The conduct of Defendant Leist was a wrongful and unlawful invasion of the privacy of Plaintiff Haas in violation of Article 2, Section 8, Constitution of the State of Arizona.

9. The court erred in denying Plaintiff Haas motion for discharge of opposing counsel.

On September 9, 1982 the United States Court of Appeals for the Ninth Circuit filed its Memorandum Opinion affirming the judgment of the District Court as to all defendants. (App. 1a). The court found that the necessary class-based, invidiously discriminatory animus was lacking for a violation of 42 U.S.C. § 1985(2) & (3); that a valid section 1985 claim was required for a violation of 42 U.S.C. § 1986; that an arrest pursuant to a warrant did not violate 42 U.S.C. § 1983; that the District Court did not abuse its discretion in dismissing the pendant state claims absent any valid federal claims; and that the District Court erred in denying Haas' motion to disqualify opposing counsel and determined this error was harmless.

The court did not address any of the other issues.

REASON FOR GRANTING THE WRIT

The Court of Appeals for the Ninth Circuit's decision contains two holdings, both of which deny Wood and Haas their constitutionally guaranteed rights to liberty, freedom of speech and due process of law. These denials of constitutionally guaranteed rights resulted from an outrageous abuse of power and rise to the level of shocking the conscience of the court.

I. The Court of Appeals for the Ninth Circuit denied Wood her Constitutional Right to Due Process by Affirming the District Court's Ruling That She Has No Constitutionally Guaranteed Right to Call Witnesses in Her Behalf in a Civil Trial

The Court of Appeals did not directly address the question of constitutionally guaranteed right of a party to a civil action in state courts to call witnesses to testify in their behalf. It is unquestioned that a party to a civil action in state courts is entitled to due process as guaranteed by the

Fifth and Fourteenth Amendments to the Constitution. The issue, then, is whether constitutionally guaranteed due process can exist if one party to a civil action in state court, by virtue of his office, can deprive another party of presenting witnesses on his own behalf. Can the abuse of the power, possessed by virtue of state office, in depriving a party to a civil action of a witness, constitute a deprivation of constitutionally guaranteed due process? We think so.

In the case at bar uniformed police officers accompanied by Leist, plaintiff in a civil action in state court, arrested Haas in the courtroom just moments before he was to testify in the civil action on behalf of Wood, a third party defendant in that same action.

Leist allegedly arrested Haas on an outstanding traffic warrant of which he had knowledge for almost two years. The failure of Leist to perform his sworn duty by not arresting Haas upon first learning of the warrant and "banking" the arrest until it

was more advantageous to him personally constitutes such an outrageous abuse of power that the conscience of this court should be shocked. There is no question that this arrest was under colour of state law. There is no question that this conduct is condoned by the local government. The question that this court must answer is, were any constitutionally guaranteed rights of Wood violated.

II. The Court of Appeals for the Ninth Circuit denied Haas his Constitutional Rights to Liberty and Freedom of Speech by Affirming the District Court's Ruling That Witnesses at Civil Trials Are Not a Protected Class.

The Court of Appeals for the Ninth Circuit cites Rutledge v. Arizona Board of Regents, 660 F.2d 1345, 1355 (9th Cir. 1981), cert. granted, 50 U.S.L.W. 3998.27 (U.S.June 29, 1982) as well as Griffin v. Breckenridge, 403 U.S. 88 (1979) for the requirement that a conspiracy must involve a racial or class-based invidiously discriminatory animus. This language is not to be found in the statute. We will not burden the court with a long disertation on the history of the Civil Rights Act on how this limiting language evolved. This court in Griffin, 403 U.S. at 102, stated:

> "The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial or perhaps otherwise class-bassed, invidiously discriminatory animus behind the conspirators' action."

It is now time for the Court to review and clearify the "...otherwise class-based..." in

light of Representative Shellabarger's remarks,

> "The object ... is ... to confine the authority of this law to the prevention of deprivations which shall attack the equality of rights of American citizens; that any violation of the right, the animus and effect of which is to strike down the citizen, to the end that he may not enjoy equality of rights as contrasted with his and other citizens' rights, shall be within the scope of the remedies of this section."

Griffin 403 U.S. at 100 citing Cong. Globe.

The Court of Appeals holds that witnesses have no common characteristics setting them apart from the remainder of the population; they can only be identified by reference to the acts of others. Opinion at p.4. The court cites Note, The Class-Based Animus Requirement of 42 U.S.C. § 1985(c): A Suggested Approach, 64 Minn. L. Rev. 635, 649-50 (1980). This dissertation points out that "'animus against such a group can be considered class-based, [when the group members] share no other trait-racial, religious, ethnic, sexual, geographic or econonic.'(citations omitted)". Not all of these groups are based upon physical characteristics, such as color of skin or sex.

Religious groups share only beliefs. Witnesses are identified by their being at a certain place at a certain time and observing certain facts through their physical senses. A witness may never be called upon to testify in court, or for that matter, may never be identified as a witness. However, he is still a member of this class-based group, and any public officer who fears his position may be challenged is suspect of anyone in this "witness group" who could testify to his detriment. A witness is as much a member of this suspect group as a Jew is a member of a religious group. The witness does not have to be giving testimony in a court room or have his name on a subpoena to be a member of this suspect group, just as a Jew does not have to be wearing a yarmulkah or a prayer shal to be a member of a religious group.

If the class engages in the exercise of a fundamental right and the defendant's actions unnecessarily burden the exercise of that right, members of the class are entitled to

the protection of the law.

> "'it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded.'" William Marbury v. James Madison, Secretary of State of the United States, 1 Cranch 137, 163, 2 L.Ed. 60 (1803) quoting Mr. Justice Black.

This Court has agreed to review this issue as it relates to 42 U.S.C. 1985(2)(cl.1.) by granting certiorari to hear Rutledge, supra. This Court may wish to expand this review to include 1985(2)(cl.2.) as clause 1 already sets forth witnesses in Federal Courts as a protected group. As Congress set forth witnesses as a protected group in clause 1, This Court should acknowledge that it was their intent that they remain a protected group in clause 2 and Section 3.

III. The Court of Appleals For The Ninth Circuit Denied Wood and Haas Of Their Constiutional Rights to Liberty and Freedom of Speech and Due Process by Affirming the District Court's Ruling That A Person Testifying At A Civil Trial Does Not Have A Constitutionally Guaranteed Right To Testify Free From Intimidation And Unreasonable Arrest

The Court of Appeals quotes Baker v. McCollan , 443 U.S. 137 140,"[t]he first inquiry in any 1983 suit...is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws [of the United States].'" Petitioner Haas alleges that his right to bear witness includes the right to appear in the courtroom (liberty, guaranteed by the First Amendment); and the right to testify without intimidation, fear or injury (freedom of speech, guaranteed by the First Amendment). The Court of Appeals did not inquire deeply enough into this right to bear witness.

In the case at bar, Respondent Police Officer Leist admits that he had knowledge of the outstanding warrant against Haas almost two

years before his arrest. Haas appeared in the courtroom with Wood on two prior occassions during the trial of the underlying civil action, but he was not arrested as he was not about to testify against Leist.

Footnote 1 in Baker,443 U.S. at 140 n.1., states, "...the state of mind of the defendant may be relevant on the issue of whether a constitutional violation has occured...". The Court need only ask themselves, Would Leist have arrested Haas just prior to his testifying if Haas were a witness for Leist? The purpose was obviously to prevent Haas from bearing witness against Leist by depriving Haas of his liberty and his freedom of speech.

The Court of Appeals further addresses Baker,443 U.S. at 143,"Absent an attack on the validity of the warrant, no deprivation of a constitutional right occured in this case...respondent was arrested pursuant to a facially valid warrant...".

Haas was not arrested pursuant to a "facial-

ly valid warrant." In fact no warrant was ever seen by Police Officer Leist, the two assisting Phoenix police officers, nor was a warrant ever produced by anyone in the Phoenix Police. Police Officer Leist telephoned his fellow police officers to come to the courtroom and arrest Haas. No one, not even Leist had ever seen the warrant. It was never served on Haas.

The first issue that the Court must address is, Was this a warrantless arrest without probable cause, orwas it an arrest on a warrant, unseen by the arresting officers? Does a computer screen listing an outstanding warrant against Haas constitute a facially valid warrant. The warrant under which Haas was arrested was invalid as it stated on its face "NO BOND", when the Constitution of the State of Arizona mandates bail for all offenses not capital.

Haas also challenged the validity of the warrant In Petitioners Rule 11(h) Opposition to Statement of Facts filed in the district court, on page 1, Haas states "As a result of an error or omission by the Maricopa County Superior Court or the Wickenburg City Prosecutor, a

warrant was issued from the Wickenburg City Court for the arrest of Plaintiff Haas. This is supported by the Affidavit of Plaintiff Haas, Exhibit 1 attached hereto; the Affidavit of David Postal, Haas' attorney in that matter, Exhibit 2 attached hereto; and a letter from Shirley H. Frondorf,then City Prosecutor for the City of Wickenburg, Exhibit 3 attached hereto." The day following the arrest, Haas was released from jail without bail by order of the Superior Court due to the invalidity of the warrant, and without being transported to the issuing Court.

Petitioner Haas contends that challenging the warrant does not require that he play martyr. Haas was the sole parent of two minor children at the time of his arrest. The Court cannot require that he remain in jail while his attorney prepares and argues a writ of Habeus Corpus through the morass of legal procedure, abandoning the care of his minor children and sacrificing his employment. Reason is the life of the law, and to so require is unreasonable.

The Court of Appeals said the "Wood and Haas should look to state law for their remedy". Memorandum, p.6. At the time of the arrest Haas and Wood requested assistance from the trial court judge, the Hon. Jeffrey S. Cates who was so intimidated by the police in his courtroom that he would not interfere. Petitioners later complained to the Phoenix Police Department, which condoned Officer Leist's actions as not an improper or unusual procedure.

The facts of this case are very similar to the situation that existed in the reconstruction era following the Civil War that caused Congress to pass the Civil Rights Acts. Local officials depriving citizens of their constitutional rights to liberty and the freedom of speech, to advance their own ends, has become a widespread practice. This unconscionable conduct by local officials is not limited to an isolated incident complained of herein, but has resulted in defense witnesses in criminal trials being dragged out of the courtroom for

such major offenses as failure to pay child support.

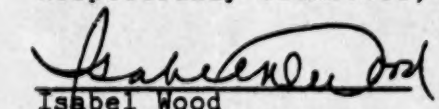
These timely arrests are employed by local officers to influence the course of justice. They are out and out deprivations of constitutionally guaranteed rights to liberty and freedom of speech. Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. Marbury v. Madison, 1 Cranch 137, 162, 163, 2 L.ED. 60 (1803)

CONCLUSION

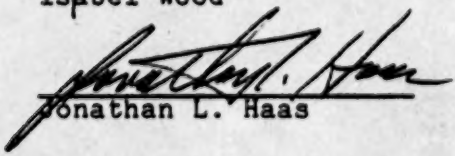
In its opinion, the Court of Appeals for the Ninth Circuit made several determinations which, taken singly or together, deprived Petitioners of their Civil Rights, Due Process, Liberty and Freedom of Speech, as guaranteed by the Fifth, Fourteenth and First Amendments to the Constitution of the United States of America.

For these reasons, a Writ of Certiorari should be granted.

Respectfully submitted,



Isabel Wood



Jonathan L. Haas

Date: December 7, 1982

CERTIFICATE OF SERVICE

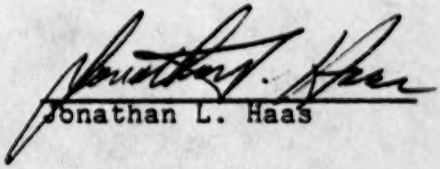
This is to certify that three copies of this Petition for Writ of Certiorari have been served on all parties required to be served, i.e., on Respondents by placing same in envelopes and depositing them in the United States mail, with first class postage prepaid, addressed to counsels of record as follows:

Don C. Stevens, II, Jones, Teilborg, etc.
2900 Arizona Bank Building, 101 North
First Avenue, Phoenix, Arizona
Attorneys for Leist

Richard K. Mahrle
Snell & Wilmer
3100 Valley Center
Phoenix, Arizona 85073
Attorneys for Jones

Theodore C. Jarvi
Levine & Jarvi
3666 North Miller Rd. # 101
Scottsdale, Arizona 85251
Attorneys for Hull

Dated this 7th day of December, 1982.



Jonathan L. Haas

FILED
Sep 9 1982
Phillip B. Winberry
Clerk,U.S.Court of
Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ISABEL WOOD, a single woman; and JONATHAN L. HAAS, a single man,	)	
Plaintiffs-Appellants,	)	No. 81-5594
vs.	)	D.C. No. CV 81-58 PHX VAC
CHARLES H. LEIST, JR., and LAURA N. LEIST, husband and wife, et al.,	)	
Defendants-Appellees,	)	MEMORANDUM

Appeal from the United States District Court
for the District of Arizona
Honorable Valdemar A. Cordova, District Judge, Presiding
Argued and Submitted July 8, 1982

Before: GOODWIN and NELSON, Circuit Judges, and PRICE,* District Judge

Isabel Wood and Jonathan Haas, appearing in propria persona in Arizona district court, filed civil rights claims under 42 U.S.C.

* Honorable Edward Dean Price, United States District Judge, Eastern District of California, sitting by designation.

SS 1983, 1985(2) & (3), and 1986, and pendent state claims. The district court granted summary judgment in favor of one defendant, Charles Leist, and dismissed plaintiffs' suit as to the remaining defendants for failure to state a claim upon which relief can be granted. Wood and Haas appealed from the judgments, as well as the district court's denial of Haas' motion to disqualify opposing counsel for a conflict of interest. We affirm.

The conduct underlying these claims occured in conjunction with a civil action in the Arizona state courts. Police officer Charles Leist was suing real estate salesperson Wood over a real estate transaction. Wood planned to call Haas, her employing broker, to testify in her behalf. At some time prior tp Haas' appearance in the courtroom, Officer Leist had run a criminal records check on the parties opposing him and their likely witnesses. Leist discovered that there was an outstanding bench warrant from another Arizona

county, seeking Haas' arrest for failure to appear on a traffic violation.

When Haas arrived in the courtroom, Leist went to a telephone, called his co-workers on the Phoenix Police Department, and reported Haas' presence through the "Crime Stop" program. While the court was in a brief recess, two uniformed officers appeared in the courtroom to arrest Haas. Haas protested that the traffic charge had been taken care of and that the warrant must have been issued in error. His protestations were ignored; he was arrested and removed from the courtroom.1/

When the judge in the civil action discovered that Haas had been arrested during the recess, he recessed the trial for a month. Upon resumption of the trial, Wood did not call Haas, make any objection or reference to his absence, or request a further continuance.

Wood and Haas then filed this action in district court. The thrust of their claims was that Leist abused his authority as a public

officer by searching the police records and by using information gained thereby for improper private purposes: to deprive Wood of due process by intimidating Haas from testifying on her behalf, and to deprive Haas of due process by instigating and making an unreasonable attest. Wood and Haas further alleged that Leist conspired with the following persons to deprive Wood and Haas of their civil rights: Robert Jones, Leist's attorney in the underlying Arizona civil action; Ronald Roth, another real estate agent involved in the Arizona civil suit; and Hugh Hull, Roth's attorney.2/

Following the filing of plaintiffs' first amended complaint, Leist moved for summary judgment on all counts; the district court granted that motion. The district court then granted Rule 12(b)(6) motions filed by the remaining defendants and dismissed Wood and Haas' complaint for failure to state a claim.

On appeal Wood and Haas argue that the district court erred in concluding as a matter

of law that they could not prevail on their federal civil rights claims, and that the district court therefore erred in dismissing their pendent state claims. Haas also appeals the district court's denial of his motion to disqualify opposing counsel for a conflict of interest.

STANDARD OF REVIEW

In reviewing the district court's grant of summary judgment in favor of defendant Leist, this court need decide only whether any genuine issue of material fact remains for trial and whether the substantive law was correctly applied. Gains v. Haughton, 645 F.2d 761, 770 (9th Cir. 1981), cert. denied, 102 U.S. 1006 (1982). Aruling on a motion to dismiss for failure to state a claim is also a question of law, freely reviewable on appeal. Such a motion should not be granted unless it appears to a certainty that plaintiffs would be entitled to no relief under any state of facts that could be proven. Alonzo v. ACF

Property Management, Inc., 643 F.2d 578, 579 (9th Cir. 1981). In reviewing both the motion for summary judgment and the motions to dismiss, the allegations of the complaint should be construed favorably to the pleader. Gains, 645 F.2d at 770.

DISCUSSION

I. The District court correctly concluded as a matter of law that plaintiffs could not prevail on their claims of violation of 42 U.S.C. § 1985(2) & (3) because the necessary class-based, invidiously discriminatory animus was lacking.

Section 1985(2) is divided into two clauses, the latter of which is applicable here, because the underlying conduct occured in conjunction with an Arizona state court proceeding. This clause is concerned with private conspiracies to obstruct justice "in any State ot Territory, with the intent to deny to any citizen the equal protection of the laws." 42 U.S.C. § 1985(2)(cl. 2). To be

actionable under this clause, a conspiracy must involve a racial or class-based invidiously discriminatory animus. Rutledge v. Arizona Board of Regents, 660 F.2d 1345, 1355 (9th Cir. 1981), cert. granted, 50 U.S.L.W. 3998.27 (U.S. June 29, 1982)3/

Section 1985(3) is concerned with conspiracies to deprive "any person or class of persons of the equal protection of the laws." See Griffin v. Breckenridge, 403 U.S. 88, 91 (1971). Section 1985(3) conspiracies, as well, must involve a racial or class-based invidiously discriminatory animus. Life Insurance Co. of North America v. Reichardt, 591 F.2d 499, 505 (1979).

Wood and Haas have attempted to frame their claims in the first amended complaint to make out witnesses intimidated by police officers as a class that is invidiously discriminated against. This purported class, however, has no common characteristics setting it apart from the remainder of the population;

it can only be identified by reference to the acts of others. This circuit has held such an animus to be insufficient. Lopez v. Arrowhead Ranches, 523 F.2d 924, 928 (9th Cir. 1975); see Note, The Class-Based Animus Requirement of 42 U.S.C. § 1985(c): A Suggested Approach, 64 Minn. L. Rev. 635, 649-50 (1980).

Although defendants may well possess an animus toward Wood and Haas, it is personal and specific, not class-based. We conclude that the district court correctly determined as a matter of law that plaintiffs could not succeed in their section 1985(2) & (3) claims.

II. The district court correctly concluded as a matter of law that there was no violation of 42 U.S.C. § 1986, because that section requires that a valid section 1985 claim be stated.

Section 1986 makes actionable the neglect or refusal, by a person with the power to prevent any of the wrongs mentioned in section 1985, to take positive action, where the

circumstances demand, to prevent those wrongs. Taylor v. Nichols, 558 F.2d 561, 568 (10th Cir. 1977). If there is no actionable conspiracy under 42 U.S.C. § 1985, no claim can be maintained under 42 U.S.C. § 1986. Id.; Phillips v. International Association of Bridge, Structural & Ornamental Iron Workers, Local 118, 556 F.2d 939, 941 (9th Cir. 1977).

Because the district court correctly concluded as a matter of law that no section 1985 claim could be maintained due to the absence of a class-based, invidiously discriminatory animus, the district court was also correct in granting judgment against plaintiffs on their § 1986 claims.

III. The district court correctly concluded as a matter of law that there were no violations of 42 U.S.C. § 1983.

There are two essential elements to a section 1983 claim: whether the conduct complained of was committed by a person acting under color of state law; and whether this

conduct deprived a person of rights, privileges or immunities secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981); Adickes v. Kress & Co., 398 U.S. 144, 150 (1970). The Supreme Court has said that "[t]he first inquiry in any § 1983 suit . . . is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws [of the United States].'" Baker v. McCollan, 443 U.S. 137, 140 (1979).

Wood and Haas argue that an otherwise valid arrest, if done for a malicious or improper purpose such as intimidating a witness rises to the level of a constitutional deprivation actionable under the civil rights statutes. We believe that Baker v. McCollan forecloses that argument. Absent an attack on the validity of the warrant, no deprivation of a constitutional right occured in this case.4/ See Smith v. Gonzales, 670 F.2d 522, 527 (5th Cir. 1982)(bad faith motive to "get" suspect irrelevant if arrest supported by properly issued warrant); Beauregard v. Wingard,362 F.2d 901, 903 (9th Cir. 1966)(maliciously inspired

investigation did not sustain section 1983 claim where probable cause to arrest found).

This is not to say that we approve of defendants' alleged conduct. We say only that Wood and Haas should look to state law for their remedy. Baker v. McCollan, 443 U.S. at 146.

IV. The district court did not err in dismissing the plaintiffs' pendent state claims.

In addition to their federal civil rights claims, Wood and Haas alleged that the defendants were engaged in a conspiracy to obstruct justice, which appellants alleged is actionable under federal common law5/ and the common law of Arizona. Wood and Haas further alleged that defendants' actions violated the privacy clause of the Arizona Constitution.6/ In entering judgment against Wood and Haas on their pendent state claims, it appears that the district court was following the rule of United Mine Workers v. Gibbs, 383 U.S. 715, 726

(where federal claim dismissed before trial, pendent state claims should often be dismissed as well); Traver v. Meshriy, 627 F.2d 934, 939 (9th Cir. 1980). Dismissal of such pendent state claims is within the discretion of the district court. Traver, 627 F.2d at 939. We find no abuse of discretion here.

V. The district court's denial of Haas' motion to disqualify opposing counsel was harnless error.

One month after the complaint was filed, plaintiff Haas moved to disqualify opposing counsel, on the ground that John J. Bouma and his firm of Snell & Wilmer, who represent defendant Jones in this action, had previously represented Haas in another matter. The opposition replied that as there was no substantial relationship between the prior matter and the current litigation, the motion should be denied. Haas then argued that Bouma and his law firm had obtained confidential information adverse to Haas and helpful to the defendants.

Bouma stated at the hearing that he had not "come into any information of any kind or notes that were not included in the Answers to Interrogatories that were publicly filed with the Court." Haas replied that several telephone conversations between Bouma and himself concerned matters not on the public record. Haas continued: "I do believe because of this he possesses an insight into my background and personal information which would be advantageous to his clients in this action, and disadvantageous to me, and therefore should not be allowed to represent the other side."

The court denied Haas' motion to disqualify opposing counsel. The court gave no reason for its decision.

Unified Sewerage Agency v. Jelco Inc., 646 F.2d 1339 (9th Cir. 1981), states this circuit's rule: where the district court has adopted as its rules the disciplinary rules of the state bar of the state in which it sits, the appellate count's inquiry must be concerned

with whether the district court correctly applied the state rules. Id. at 1342 n.1. Rule 7(d) of the U.S. District Court, District of Arizona (West 1981), adopts the Code of Professional Responsibility as set forth in Rule 29(a) of the Rules of the Arizona Supreme Court.

The Arizona Supreme Court does not appear to have ruled on the circumstances under which counsel should be disqualified. In the absence of such a definitive interpretation of state law from the state's highest court, substantial deference is given to the district court's construction of the law of the state in which it sits. Normally, the district court will not be reversed on appeal unless its interpretation is clearly erroneous. Gaines v. Haughton, 645 F.2d at 770.

Haas relies primarily on the 1970 Arizona appellate case of Associated Finance Corp. v. Walters, 12 Ariz.App. 369, 470 P.2d 689 (1970):

> As a general rule, an attorney can and should be disqualified from representing interests adverse to a former client when the former client objects, . . . if the attorney has obtained information from the prior representation which would be adverse to the former client's interest or helpful to the present client, or if the present litigation is substantially related to matters of past representation.

Id. at ___,(sic)470 P.2d at 694. Under Associates Finance, if Bouma obtained information adverse to his former client, he should have been disqualified.

Haas' position is strengthened by Chugach Electric Association v. United States District Court, 370 F.2d 441 (9th Cir. 1966), cert. denied, 389 U.S. 820 (1967), in which an attorney was disqualified because there was a likelihood that in his prior representation the attorney had gained knowledge of confidential matters that would provide him with "greater insight and understanding of the significance of subsequent events . . . and offer a promising source of discovery." Id. at 443.

Defendant Jones and his attorneys rely on the earlier Arizona appellate case of Nichols v. Elkins, 2 Ariz.App. 272, 408 P.2d 34 (1965),

a case not discussed by the Associates Finance court. In discussing the principle that bars an attorney from representing an interest adverse to that of a former client, the Nichols court stated that "[a]n attorney's acceptance of employment, however, to act in opposition to his former client is not ipso facto improper. The attorney is not disqualified if his subsequent employment has no reference to the matters with which the previous attorney-client relationship was concerned." Id. at ___,(sic) 408 P.2d at 39.

We do not read this language from Nichols so narrowly as do defendants. It is clear to us that where a party alleges that his former attorney actually gained confidential information adverse to his former client's interests, even a complete dissimilarity between the former and present matters will not prevent the attorney's disqualification.

With this in mind, we review the district court's ruling on the motion for disqualification under the abuse of discretion standard.

Unified Sewage Agency, 646 F.2d at 1351. The parties disagree as to whether Bouma and Snell & Wilmer possessed confidential information adverse to the interests of Haas. Bouma's assertion that he possessed no such confidential information was squarely contradicted by Haas. We agree with Haas that the party seeking disqualification "does not have the burden of specifying the secret and confidential information which was available to [opposing counsel]." Chugach, 370 F.2d at 444.

Thus we bwlieve that Haas carried any necessary burden regarding disqualification. To avoid even the appearance of impropriety, the district court should have disqualified Bouma.

Because we affirmed the district court's decisions on the merits, however, we consider whether its refusal to disqualify opposing counsel was harmless error. There is no indication that Haas was prejudiced in any way. As this "error" did not affect the substantial

rights of the parties, we disregard it. Gray v. Shell Oil Co., 469 F.2d 742, 751-52 (9th Cir. 1972), cert. denied, 412 U.S. 943 (1973); Goodman v. United States, 398 F.2d 879 (9th Cir. 1968); 7 J. Moore & J. Lucas, Moore's Federal Practice, _ 61.11 (2d ed. 1982).

CONCLUSION

The district court correctly granted judgment against plaintiffs Wood and Haas on their federal civil rights claims brought under 42 U.S.C. §§ 1983, 1985(2) & (3), and 1986. Furthermore, the district court did not abuse its discretion in dismissing plaintiffs' pendent state claims.

In light of its correct decisions on the merits and because the substantial rights of the parties were unaffected, the district court's refusal to disqualify opposing counsel was harmless error. The judgments are AFFIRMED.

FOOTNOTES

1. During Haas' removal from the courtroom, a scuffle occured; Haas was charged with attempting to resist arrest. He was acquitted.

2. The complaint also named the spouse of each defendant, presumably in an attempt to reach community assets.

3. The Supreme Court granted certiorari to resolve a split in the circuits over the construction of the first clause of 42 U.S.C. § 1985(2), which is concerned with conspiracies to obstruct justice or to intimidate any party or witness in federal court. The question presented to the Supreme Court is whether claims under the first clause of section 1985(2) must involve a class-based invidiously discriminatory animus, as must claims under the second clause of that section. 50 U.S.L.M. 3998.23 (1982); see 51 U.S.L.W. 3009 (1982). The D.C., Third, and Ninth Circuits do not require a class-based animus; the Fifth and Eighth Circuits do, however. Rutledge, 660 F.2d at 1354 & n.3.

4. We have found only one case, Lessman v. McCormick, 591 F.2d 605, 611 (10th Cir. 1979), which states that an arrest pursuant to a valid warrant might be actionable under section 1983, if the arrest were an abuse of power. The Lessman court read Pearson v. Ray, 386 U.S. 547 (1967), "as support for the proposition that an arrest which might be lawful on its face can be an abuse of power, condemned by the Civil Rights Act, if done for an improper purpose." 591 F.2d at 611. Lessman, however, was decided prior to Baker McCollan.

5. This claim appears wholly frivolous. See C. Wright Law of Federal Courts 278-86 (3d ed. 1976)

6. "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Ariz. Const. art. II, § 8.

LODGED
JUN 17 1981 /s/KK
Office of the Clerk
U.S.District Court
District of Arizona

FILED
JUN 19 1981
W.J.Forstenau, Clerk
United States District Court
For The District of Arizona
By /s/KK
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

ISABEL WOOD, a single woman; and JONATHAN L. HAAS, a single man,	NO. CIV. 81-58 PHX-VAC
Plaintiffs,	JUDGMENT
vs.	
CHARLES H. LEIST, JR., and LAURA N. LEIST, husband and wife, RONALD E. ROTH and LINDA ROTH, husband and wife; ROBERT E. JONES, JR., and MARLYN JONES, husband and wife; HUGH W. HULL and LYNNE HULL, husband and wife,	
Defendants.	

Defendant Leist's Motion for Summary Judgment and plaintiffs' Cross Motion for Summary Judgment on Count V of the First Amended Complaint having come on for hearing

this 15th day of June 1981, before this Court, the Court having reviewed the Motions and having heard oral argument thereon and being fully advised in the premises,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that defendants Leist's Motion for Summary Judgment be and the same is hereby granted, that plaintiffs' Complaint be dismissed, and that plaintiffs take nothing from defendants Leist thereby.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs' Cross Motion for Summary Judgment on Count V of the First Amended Complaint be and the same is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants Leist have and collect their lawfully taxable costs, together with interest thereon at the rate of ten percent (10%) per annum from the date of the judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court specifically finds that there is no just cause for delay and that the judgment

should be entered herein forthwith, pursuant to Rule 54 (b), Federal Rules of Civil Procedure.

DONE IN OPEN COURT, this 18th day of June, 1981.

sig/ Valdemar A. Cordova

The Honorable Valdemar A. Cordove
Judge of the United States District
Court for the District of Arizona

Copy of the foregoing mailed this
17th day of June 1981 to:

Ms. Isabel Wood and
Mr. Jonathan L. Haas
P.O. Box 7561
Phoenix, Arizona 85011
In Propia Persona

Theodore C. Jarvi, Esq
LEVINE & JARVI
3666 North Miller Road, #101
Scottsdale, Arizona 85251

John J. Bouma, Esq.
SNELL & WILMER
3100 Valley Center
Phoenix, Arizona 85073

Ronald E. Roth, Esq.
3827 West Lane Avenue
Phoenix, Arizona 85021

By sig/ Diane M. Evans

LODGED
JUN 25 1981 sig/K
Office of the Clerk
U.S. District Court
District of Arizona

FILED
JUN 29 1981
W.J.Forstenau, Clerk
United States District Court
For the District of Arizona
By sig/ SK
Deputy Clerk

John J. Bouma
Richard K. Mahrle
SNELL & WILMER
3100 Valley Center
Phoenix, Arizona 85073
Telephone: 257-7289

Attorneys for Defendant Jones

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

ISABEL WOOD, a single woman;and JONATHAN L. HASS, a single man, Plaintiffs, vs. CHARLES H. LEIST, JR. and LAURA N. LEIST, husband and wife, Defendants.	NO: CIV 81-58 PHX VAC JUDGMENT

Defendants Jones' Motion to Dismiss the Second Amended Complaint having come on for hearing on June 22, 1981 before this Court, the Court having reviewed the Motion and hearing oral argument thereon, and being fully advised in the premises and finding the defend-

ants Jones' Motion well-taken:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that defendants Jones' Motion to Dismiss be and the same is hereby granted, that plaintiffs' Second Amended Complaint be dismissed, and that plaintiffs take nothing thereby.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED than defendants Jones have and recover their lawfully taxable costs, together with interest thereon at the highest legal rate from the date of the Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED denying defendants Jones' request for attorneys' fees pursuant to 42 U.S.C. § 1988.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the court specifically finds that there is no just cause for delay and that Judgment should be entered herein forthwith, pursuant to Rule 54(b), Federal Rules of Civil Procedure.

DONE IN OPEN COURT this 26th day of June,

1981.

/s/ Valdemar A. Cordova
HONORABLE VALDEMAR A. CORDOVA
Judge of the United States
District Court

Copy of the foregoing mailed
this 25th day of June, 1981,
to:

Isabel D. Wood
Post Office Box 7461
Phoenix, Arizona 85011
In Propria Persona

Jonathan L. Haas
Post Office Box 7461
Phoenix, Arizona 85011
In Propria Persona

William E. Jones
JONES, TEILBORG, SANDERS, HAGA
& PARKS, P.C.
2900 Arizona Bank Building
101 North First Avenue
Phoenix, Arizona 85003
Attorneys for Defendants Leist

Theodore C. Jarvi
LEVINE & JARVI
3666 North Miller Road, #101
Scottsdale, Arizona 85251

Ronald E. Roth
3728 West Lane Avenue
Phoenix, Arizona 85021

By /s/ Beth Melcher

LEVINE & JARVI-
Scottsdale
Theodore C. Jarvi
3666 North Miller Rd.,
101
Scottsdale, Arizona
85251
Attorneys for
Defendants Hull

LODGED
JUN 30 1981 /s/KK
Office of the Clerk
U.S.District Court
District of Arizona

FILED
JUL 8 1981
W.J.Furstenau, Clerk
United States District
Court
For The District of
Arizona
By /s/ KK
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

ISABEL WOOD, a single woman; and JONATHAN L. HAAS, a single man, Plaintiffs, vs. CHARLES H. LEIST, JR., and LAURA N. LEIST, husband and wife; RONALD E. ROTH and LINDA ROTH, husband and wife; ROBERT E. JONES, JR. and MARLYN JONES, husband and wife; HUGH W. HULL and LYNNE HULL, husband and wife, Defendants.	No. CIV. 81-58 PHX-VAC JUDGMENT

Defendants Hull's Motion for Summary Judgment and Plaintiffs' Cross Motion for

Summary Judgment on Count V of the First Amended Complaint having come on for hearing this 15th day of June, 1981, before this Court, the Court having reviewed the Motions and having heard oral argument thereon and being fully advised in the premises,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Defendants Hull's Motion for Summary Judgment be and the same is hereby granted, that Plaintiffs' Complaint be dismissed, and that Plaintiffs take nothing from Defendants Hull thereby.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court specifically finds that there is no just cause for delay and that judgment should be entered herein forthwith, pursuant to Rule 54(b), Federal Rules of Civil Procedure.

DONE IN OPEN COURT, this 7th day of July, 1981.

/s/ Valdemar A. Cordove
The Honorable Valdemar A. Cordove
Judge of the United States District
Court for the District of Arizona

COPY of the foregoing
mailed this 30 day
of June, 1981, to:

Ms. Isabel Wood and
Mr. Jonathan L. Haas
P.O.Box 7461
Phoenix, Arizona 85011
In Propria Persona

John J. Bouma, Esq.
SNELL & WILMER
3100 Valley Center
Phoenix, Arizona 85073

Ronald E. Roth, Esq.
3827 West Lane Avenue
Phoenix, Arizona 85021

William E. Jones
JONES, TEILBORG, SANDERS,
HAGA & PARKS, P.C.
2900 Arizona Bank Building
101 North First Avenue
Phoenix, Arizona 85003

By /s/Fuell

Office-Supreme Court, U.S.
FILED
FEB 3 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-955

In The

Supreme Court of the United States

October Term, 1982

ISABEL WOOD and JONATHAN L. HAAS,

Petitioners,

v.

CHARLES H. LEIST, JR. and LAURA N. LEIST;
ROBERT E. JONES, JR. and MARILYN JONES;
HUGH W. HULL and LYNN HULL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS LEIST

Don C. Stevens II
(Counsel of Record)
JONES, TEILBORG, SANDERS,
HAGA & PARKS, P.C.
101 N. First Avenue, Suite 2900
Phoenix, Arizona 85003
(602) 251-2758
Attorneys for Respondents Leist

QUESTIONS PRESENTED

Although the "questions presented" set forth in the Petition for Writ of Certiorari filed on behalf of Isabel Wood and Jonathan L. Haas seems to seek redress for a new civil rights violation arising from the issuance of the Memorandum Decision of the Court of Appeals for the Ninth Circuit, it is obvious that Petitioners are simply seeking further appellate review of the questions presented to the Court of Appeals. It is respectfully submitted that those questions are as follows:

1. Did Petitioners state a valid cause of action pursuant to 42 United States Code, §§ 1985(2) and 1985(3) arising out of conduct occurring in connection with a state court proceeding?
2. Did Petitioners state a valid cause of action pursuant to 42 United States Code, § 1983?

Respondents Leist respectfully submit that any other issues are not appropriately raised through a Petition for Writ of Certiorari and were unintentionally included by these Petitioners, who are appearing *in propria persona.*

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No. 82-955

In The

Supreme Court of the United States

October Term, 1982

ISABEL WOOD and JONATHAN L. HAAS,

Petitioners,

v.

CHARLES H. LEIST, JR. and LAURA N. LEIST;
ROBERT E. JONES, JR. and MARILYN JONES;
HUGH W. HULL and LYNN HULL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS LEIST

Respondents, Charles H. Leist, Jr. and Laura N. Leist, respectfully request that the Court deny the Petition for Writ of Certiorari, seeking review of the decision of the United States Court of Appeals for the Ninth Circuit. A copy of the unpublished Memorandum Decision of the Court of Appeals was included in the appendix of the Petitioners' Brief.

STATEMENT OF THE CASE AND FACTS

Respondents Leist submit that the factual setting upon which Petitioners' claims were based, and the course of the proceedings below were not in serious dispute and are more than adequately set forth in the Memorandum Decision of the Court of Appeals for the Ninth Circuit. Respondents Leist take issue with the Petitioners' "statement of the case", appearing at pages 3-10 of the Petition as being unsupported, in large part, by any facts which are part of the record. The statement of the case as it relates to Respondents Leist are that following the filing of an Answer to the Complaint, Respondents Leist moved for summary judgment on April 20, 1981, and that motion was granted on June 5, 1981. Timely notice of appeal was filed by Petitioners herein from the judgment in favor of Respondents Leist.

As previously indicated, the facts are contained in the Memorandum Decision of the Ninth Circuit Court of Appeals, but it is undisputed that a valid and outstanding warrant for Haas' arrest existed and he was therefore subject to arrest at any time when found by any police officer. Furthermore, it is undisputed that Petitioners do not have, and have not made any appropriate claims that state, local or national law enforcement computer records regarding criminal arrests and warrants are constitutionally protected from inquiry by police officers, or that Petitioner Haas had any protectable privacy interest in such records maintained by law enforcement agencies regarding outstanding arrest warrants.

REASONS WHY THE WRIT SHOULD BE DENIED

1. *Petitioners have not demonstrated reasons, of the character required by Rule 17, why a writ of certiorari should be granted.*

In petitioning this Court for a writ of certiorari, United States Supreme Court Rule 17 requires petitioners to demonstrate the "special and important reasons" for the Court to issue the requested writ. Respondents Leist submit that none of the considerations found in Rule 17 apply in this case. For instance, there is no contention by Petitioners that the Memorandum Decision of the Court of Appeals for the Ninth Circuit or the basis for the court's reasoning, is in conflict with any of its other decisions, or the decision of any other circuit. Nor have Petitioners demonstrated any conflict of the Ninth Circuit's Decision with the applicable decisions of this Court. Finally, Respondents Leist submit that the Court of Appeals for the Ninth Circuit did not decide any important questions of federal law not previously decided upon by this Court, but rather simply applied previous decisions of this Court to the factual circumstances which were presented to it.

Petitioners recognize that the Court of Appeals properly applied this Court's holding in *Griffin v. Breckenridge*, 403 U.S. 88 (1971), with respect to their claims under 42 U.S. Code §§ 1985(2) and 1985(3). There is simply no basis for the Court to reconsider or overrule that sound decision because Petitioners have done nothing more than to attempt to create a new "class", which is nothing more than a large amorphous group of as yet unidentified people who may some day become witnesses in civil proceedings. Petitioners have failed to show any basis whatsoever that a class based, invidiously discriminatory animus was present involving any of the respondents herein and have failed to state a cause of

action pursuant to 42 U.S. Code §§ 1985(2) and 1985(3). *Rutledge v. Arizona Board of Regents*, 660 F.2d 1345 (9th Cir. 1981), *cert. granted*, 1973 L. Ed. 2d 1382 (1982).

The Ninth Circuit Court of Appeals correctly found that the constitutional rights of Petitioners Isabel Wood and Jonathan L. Haas were not violated, and their Complaint did not, therefore, state a cause of action under 42 U.S. Code § 1983. Petitioners apparently urge the Court to overrule *Baker v. McCollom*, 443 U.S. 137 (1979) and establish a federal cause of action even though it is undisputed that there was an outstanding warrant for Mr. Haas and it was at least facially valid. Respondent Leist, in this case, did nothing to violate the rights of either of the Petitioners herein, and did nothing more than to provide information to police officers who acted on their own initiative in arresting Mr. Haas.

The decision of the Seventh Circuit Court of Appeals in *Butler v. Goldblatt Brothers, Inc.*, 589 F.2d 323 (7th Cir. (1978) raises similar factual circumstances and reached the appropriate conclusion that a person supplying information to police officers does not deprive the plaintiff of any right under color of state law and a complaint based upon such action will not state a cause of action under 42 U.S. Code § 1983. Moreover, it has never been disputed that on the day Mr. Haas was arrested, the trial involving Isabel Wood was continued to a later date and except in response to a suggestion made during oral argument before the Ninth Circuit Court of Appeals, Petitioners have never demonstrated any reason why Mr. Haas did not testify at the subsequent trial, or that Isabel Wood at any later time raised any issue with respect to Mr. Haas' unavailability.

Finally, as noted in the brief in opposition for Respondents Jones, the Ninth Circuit Court of Appeals filed a Memorandum Decision, which under Rule 21(b), Rules of the United

States Court of Appeals for the Ninth Circuit, is appropriate only when the case presents no legal issues of unique interest or substantial public importance and does not establish, modify, clarify or criticize an existing rule of law. It is clear that the Ninth Circuit Court of Appeals was not presented with any such important issue and the Ninth Circuit was correct in finding Petitioners' appeal was one appropriate for such an unpublished disposition. Petitioners have been afforded a full and fair opportunity both at the trial court and before the Ninth Circuit Court of Appeals to air any complaints they had arising out of the underlying civil litigation. Petitioners were given the benefit of every doubt and a review of the issues raised and the resolutions of these issues by the lower courts demonstrate Petitioners' case was considered fully and fairly, and found to be without merit.

CONCLUSION

Respondents Leist respectfully submit that Petitioners have utterly failed to demonstrate any reason for the issuance of a Writ of Certiorari to allow review of this case. Petitioners have failed to supply even the vaguest inference of the presence of the consideration outlined in Rule 17 as being present. Petitioners have also failed to show that their case was not fully considered and correctly decided on the merits, and Respondents Leist therefore respectfully submit the Petition for Writ of Certiorari should be denied.

Respectfully submitted this 31st day of January, 1983.

JONES, TEILBORG, SANDERS,
HAGA & PARKS, P.C.

By Don C. Stevens II
Attorneys for Respondents Leist

Supreme Court, U.S.
FILED
JAN 5 1983
ALEXANDER L. STEVAS
CLERK

No. 82-955

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1982

ISABEL WOOD AND JONATHAN L. HAAS
PETITIONERS
v.
CHARLES H. LEIST, JR. AND LAURA N. LEIST,
ROBERT E. JONES, JR. AND MARILYN JONES
HUGH W. HULL AND LYNN HULL
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS JONES

John J. Bouma
Richard K. Mahrle
SNELL & WILMER
3100 Valley Bank Center
Phoenix, Arizona 85073
(602) 257-7211

Attorneys for Respondents
Jones

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Richard K. Mahrle
SNELL & WILMER
3100 Valley Bank Center
Phoenix, Arizona 85073
(602) 257-7211

Attorneys for Respondents
Jones

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BRIEF IN OPPOSITION FOR RESPONDENTS JONES

Respondents, Robert and Marilyn Jones, respectfully request that the Court deny the Petition for Writ of Certiorari, seeking review of the decision by the United States Court of Appeals for the Ninth Circuit. A copy of

the unpublished Memorandum Decision of the Court of Appeals was included in the appendix of the Petitioners' brief.

QUESTIONS PRESENTED

The questions presented by the Petitioners in this matter are improperly framed as whether the Court of Appeals for the Ninth Circuit, apparently through the issuance of its Memorandum Decision, denied Petitioners their civil rights. Such an issue, even were it present in this case, is not appropriately raised through a Petition for Writ of Certiorari. Framed more accurately, the questions presented by Petitioners for review to this Court, as presented to the Court of Appeals, are as follows:

1. Did Petitioners state a valid cause of action pursuant to 42 U.S.C. §§ 1985(2) & 1985(3) arising out of conduct occurring in connection with a state court proceeding when the necessary class-based, invidiously discriminatory animus was lacking?

2. Can Petitioners state a valid cause of action pursuant to 42 U.S.C. § 1983 when neither of the Petitioners was deprived of a right secured by the Constitution or laws of the United States?

STATEMENT OF THE CASE AND FACTS

The factual setting out of which Petitioners' claim arose, and the course of proceedings below, are more than adequately set forth in the Memorandum Decision of the Court of Appeals. Respondents are compelled to observe, however, that in many instances, Petitioners' statement of the facts and the case include misleading statements that do not have, and never have had, support in the record.

Throughout this litigation, Petitioners have failed to separate the alleged acts of each of the Respondents and view them in their individual capacities. For example, Respondents Jones and Hull, who were two of the attorneys involved in the underlying state court litigation, have consistently been treated by Peti-

tioners as prime actors in the alleged conspiracy. The fact of the matter is that there has never been any allegation against these attorneys other than the conclusory statement that they were told of the valid outstanding warrant against Petitioner Haas prior to his arrest.

Petitioners also indulge in considerable departure from the record created below. For example, on pages 23 and 24 of their brief, Petitioners claim, without geographic or chronological limitation, that there is a widespread practice of police misconduct involving improper arrests of potential witnesses. Petitioners go on to describe an incident of unknown origin, time, place, or circumstances, when a defense witness in a criminal trial was removed from a courtroom, apparently on a valid warrant, for failure to pay child support. This unsupported allegation makes its first appearance in the Petitioners' brief, and is wholly without support in the record.

A similar situation pertains to Petitioners' arguments and factual assertions re-

garding the Haas arrest warrant. In their brief, Petitioners admit that the police computer showed the warrant as outstanding. They futher admit that a warrant for Haas' arrest was in fact issued because the copy they apparently possess states "NO BAIL" on its face.[1/] These admissions establish that there was, in fact, a facially valid and outstanding warrant for Haas' arrest.

REASONS WHY THE WRIT SHOULD BE DENIED

1. Petitioners have not demonstrated reasons, of the character required by Rule 17, why a Writ of Certiorari should be granted.

In seeking review by this Court on a Writ of Certiorari, it is incumbent on the Petitioners to demonstrate "special and important reasons" for the Court to issue the requested writ. United States Supreme Court Rule 17 sets forth a series of considerations which indicate

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1/ Petitioners assumption regarding what this statement on the face of the warrant means has no support in the record or otherwise.

the character of cases that are of sufficient moment for this Court to accept review. Petitioners have failed to demonstrate that any of the considerations found in Rule 17 apply in this case.

The Petitioners have not shown, nor have they attempted to show, that the Memorandum Decision of the Court of Appeals for the Ninth Circuit is in conflict with any of its other decisions, or the decisions of any other circuit. Nor have the Petitioners demonstrated that the Court of Appeals decision is in conflict with any applicable decisions of this Court.

Quite to the contrary, Petitioners acknowledge that with respect to their claims under 42 U.S.C. §§ 1985(2) & 1985(3), the Court of Appeals properly applied this Court's holding in Griffin v. Breckenridge, 403 U. S. 88 (1971), and instead urge the Court to now reconsider, or overrule, that sound decision.

With respect to their claim based on 42 U.S.C. § 1983, the Petitioners would also

have this Court overrule the sound reasoning of Baker v. McCollan, 443 U. S. 137 (1979) and grant them a federal cause of action even when an arrest is based on a facially valid warrant.

In its Memorandum Decision, the Court of Appeals has not decided any important question of federal law not previously decided by this Court. The Court of Appeals merely applied previous decisions of this Court and did so correctly.

The Court of Appeals itself perceived this case's lack of public or precedential import. Instead of issuing a published opinion on the matter, it filed a Memorandum Decision. Under Rule 21(b), Rules of the United States Court of Appeals for the Ninth Circuit, a Memorandum Decision is appropriate only when the case presents no legal issues of unique interest or substantial public importance and does not establish, modify, clarify or criticize an existing rule of law. It is submitted that the Court of Appeals correctly viewed Petitioners'

appeal as one appropriate for such an unpublished disposition.

The essence of Petitioners' position before this Court is that they disagree with the decisions rendered below and contend that they do have a federal cause of action based upon the facts stated. This disagreement, of interest only to the parties, simply does not demonstrate features of compelling public importance that make cases appropriate for review by certiorari. NLRB v. Pittsburg S.S. Co., 340 U.S. 498 (1951).

Petitioners attempt to suggest that there is some parallel between their case and Rutledge v. Arizona Board of Regents, 660 F.2d 1345 (9th Cir. 1981), cert. granted, 73 L.Ed.2d 1382 (1982), that would require this Court to also grant certiorari here. However as noted by the Court of Appeals in its Memorandum Decision, the Rutledge case involves allegations of a conspiracy to obstruct justice in the federal courts. There is a split among the circuits whether class-based invidiously discrim-

inatory animus is required for 42 U.S.C. § 1985(2) actions arising out of events occurring in connection with federal court matters and certiorari was granted to resolve that dispute. See the Memorandum Decision, footnote 3, page 19a of the appendix in Petitioners' brief. No such issue is even claimed to be presented here.

With respect to alleged conspiracies involving state court proceedings, which is the situation presented here, the law is well-settled that class-based, invidiously discriminatory animus must be present to state a cause of action pursuant to 42 U.S.C. §§ 1985(2) & 1985(3). Rutledge v. Arizona Board of Regents, supra.

2. The courts below fully considered and correctly decided the issues raised.

Petitioners' basic justification for acceptance of review by this Court is that they disagree with the decisions rendered by the District Court and the Court of Appeals. Those courts both decided that based upon the

facts pleaded by Petitioners, there was no federal cause of action cognizable under 42 U.S.C. § 1983, or 42 U.S.C. § 1985. A brief review of those issues, and their resolution by the lower courts, demonstrates that Petitioners' case was considered fully and decided correctly.

Reviewing the allegations as they relate to the Respondents Jones, the issue under Petitioners' 42 U.S.C. § 1985 claim was whether Petitioners could demonstrate that they were victims of a conspiracy to deprive them of equal protection of law, and that the conspiracy was motivated by an invidiously discriminatory racial, or class-based, animus.

In dismissing this claim, both the District Court and the Court of Appeals merely followed the sound reasoning of Griffin v. Breckenridge, supra, as applied by the Ninth Circuit in such cases as Blevins v. Ford, 572 F.2d 1336 (9th Cir. 1978); Briley v. State of California, 564 F.2d 849 (9th Cir. 1977); and Lopez v. Arrowhead Ranches, 523 F.2d 924 (9th Cir. 1975).

In an attempt to create the requisite class-based, invidiously discriminatory animus, Petitioners have alleged that they are members of a class of witnesses subject to police intimidation. However, as recognized by the Court of Appeals, this purported class has no characteristics setting it apart from the remainder of the population and it can only be identified by reference to the alleged acts of others. That is insufficient to state a claim cognizable under 42 U.S.C. § 1985. Lopez v. Arrowhead Ranches, supra.

Petitioners' claim under 42 U.S.C. § 1983 was also carefully considered and properly rejected by both the District Court and the Court of Appeals. Relying primarily on Baker v. McCollan, 443 U.S. 137 (1979), the Court of Appeals held that Petitioner Haas' arrest on a facially valid warrant created no deprivation of a constitutional right. That ruling was entirely consistent with Baker v. McCollan, supra, which held that an arrest on a facially valid warrant, even if it was later determined that

the warrant was improperly issued, does not state a cause of action pursuant to 42 U.S.C. § 1983.

CONCLUSION

In summary, Petitioners have failed to demonstrate any cogent reason for the issuance of a Writ of Certiorari to allow review of this case. Not one of the considerations outlined in Rule 17 is present. Neither can Petitioners show that their case was not fully considered and correctly decided on the merits. For the reasons set forth herein, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted

John J. Bouma
Richard K. Mahrle
SNELL & WILMER
3100 Valley Bank Center
Phoenix, Arizona 85073
Attorneys for
Respondents Jones

January 5, 1983